

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Martin S. Gottesfeld, pro se,
Plaintiff
- against -
Hugh J. Hurwitz, et al.

DOC#:
Civil No.:

DATE FILED: 8-28-19
18-cv-10836-PGG

S.D. OF N.Y.

MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR RECONSIDERATION
OF D.E. 66

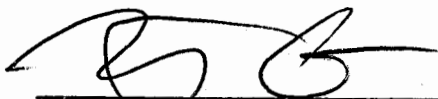
Plaintiff Martin S. Gottesfeld (herein "plaintiff"), acting pro se, hereby moves The Honorable Court for an extension of time in which to file a motion for reconsideration of its order at docket entry (D.E.) 66 in the instant case. In support of the plaintiff's motion for an extension of time, he provides Exhibit 1 hereto: Affidavit of Martin S. Gottesfeld, Exhibit 2 hereto: image of the envelope bearing the Court's order of D.E. 66 as it was received by him today, Monday, August 19th, 2019, after 3:00 P.M., and Exhibit 3 hereto: enlarged image of a marking on the envelope bearing the Court's order of D.E. 66 indicating that it was received at the mailroom of the Federal Correctional Institution (FCI) Terre Haute on Monday, August 12th, 2019. The plaintiff respectfully requests The Honorable Court to take judicial notice of exhibits 1-3 hereto pursuant to Fed. R. Evid. 201(c)(2).

In the interests of justice and judicial economy, the plaintiff hereby requests an extension of the fourteen (14) day period provided under Loc. R. Civ. P. 6.3 for him to file a motion for reconsideration of D.E. 66 until fourteen (14) days following the due date for the plaintiff's opposition to the defendants' motion to dismiss (D.E. 51 and D.E. 52). The Court previously granted an extension of time for the plaintiff to file his opposition to the defendants' motion until August 31st, 2019 (please see D.E. 62 at 2). The Court then denied an open-ended extension of time due to peculiar circumstances that worried the plaintiff (please see D.E. 64 at 1). The plaintiff then filed (pursuant to Houston v. Lack, 487 U.S. 266 (1988)) on Monday, August 5th, 2019, a subsequent motion for an extension of time in

which to file his opposition to the defendants' motion in an envelope bearing U.S. Postal Service (USPS) tracking number 9114 9023 0722 4293 0876 98. The plaintiff is unaware of any action the Court may have taken on his August 5th motion for an extension, so he is unable to offer a firm date fourteen (14) days after the filing deadline for his opposition to the defendants' motion by which to file his motion for reconsideration.

In any circumstance, the plaintiff also moves The Court to grant him equitable tolling due to the delays beyond his control that prevented notice of D.E. 66 from reaching him for fourteen (14) days. Should the Court deny the instant motion, the plaintiff requests that it allow him to file his motion for reconsideration within fourteen (14) days of the date upon which he is notified of the Court's denial.

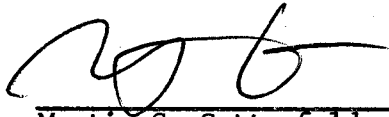
Respectfully mailed on Monday, August 19th, 2019, in accordance with Houston v. Lack, 487 U.S. 266 (1988) (and therefore filed thereupon) in an envelope with sufficient pre-paid first-class U.S. postage affixed and bearing USPS tracking number 9114 9023 0722 4293 0883 05, handed to Ms. J. Wheeler of the FCI Terre Haute CMU unit team while acting in her official capacity as an agent of the defendants,



Martin S. Gottesfeld, pro se
Reg. No.: 12982-104
Federal Correctional Institution
P.O. Box 33
Terre Haute, IN 47808

CERTIFICATE OF SERVICE

I, Martin S. Gottesfeld, hereby certify that on Monday, August 19th, 2019, I mailed a copy of the foregoing document to counsel for the defendants by handing said copy in an envelope with sufficient pre-paid first-class U.S. postage affixed to Ms. J. Wheeler for delivery to the U.S. Postal Service in her official capacity as a member of the FCI Terre Haute CMU unit team and an agent for the defendants (in accordance with Houston v. Lack, 487 U.S. 266 (1988)),



Martin S. Gottesfeld, pro se

Exhibit 1

Affidavit of Martin S. Gottesfeld:

I, Martin S. Gottesfeld, hereby affirm that the following is true and accurate to the best of my knowledge, information, and belief on this 19th day of August, 2019, and I declare the following under penalty of perjury pursuant to 28 U.S.C. §1746:

1. My name is Martin S. Gottesfeld and I am the sole plaintiff in the case of 18-cv-10836-PGG pending in U.S. District Court for The Southern District of New York (herein "the case").

2. Today, Monday, August 19th, 2019, I received for the first time the Court's order of docket entry (D.E.) 66 in the case, dated Monday, August 5th, 2019. I had never before seen the order and I did not previously know that it existed.

3. The envelope bearing the order was postmarked Wednesday, August 7th, 2019.

4. When the envelope bearing the order was given to me today by the unit team here at the Federal Correctional Institution Terre Haute communications-management unit (CMU), i.e. by agents of the defendants in the case, it had been marked as received at the mailroom a week ago on Monday, August 12th, 2019. The plaintiff is confident based on his skills and experience in the FCI Terre Haute CMU since Monday, April 1st, 2019, that he is drawing the correct factual conclusion from the marking on the envelope.

5. Such delays have been typical despite Federal Bureau of Prisons policies requiring the agents of the defendants to deliver court filings both to and from the U.S. Postal Service as expeditiously as possible.

6. I believe that my future motion to reconsider D.E. 66 and my opposition to the defendants' motion to dismiss share common questions of law and fact, and that it is in the interest of judicial economy that the Court first consider my opposition to the defendants' motion before it reconsider D.E. 66. Further, moving to reconsider prior to the filing of my opposition to the defendants' motion to dismiss would add additional delay to the filing of the latter.

7. I have affixed sufficient pre-paid first-class U.S. postage to the envelope bearing my MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR RECONSIDERATION OF D.E. 66 to the Court and such is ready to be mailed today, Monday, August 19th, 2019. I, however, can do nothing further to mail the aforementioned motion to the Court until tomorrow, Tuesday, August 20th, 2019, due to the mail procedures here in the FCI Terre Haute CMU. In accordance with Houston v. Lack, 487 U.S. 266 (1988), I am dating my filings today, Monday, August 19th, 2019, for mailing to the Court for posting on the docket of the case.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on Monday, August 19th, 2019.



Martin S. Gottesfeld

Exhibit 2

CLERK
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
THE DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE
500 PEARL STREET - NEW YORK, NY 10007-1312

OFFICIAL BUSINESS

DOCKET SERVICES

CONFIDENTIAL

LEGAL MAIL

Martin S Gottesfeld
ID No. 12982-104
FCI Terre Haute
P.O Box 33
Terre Haute, IN 47808

neopost
08/07/2019
US POSTAGE

FIRST-CLASS MAIL

\$01.30⁰



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Received opened M 2019-08-19

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201-0412

08/28/19



Exhibit 3

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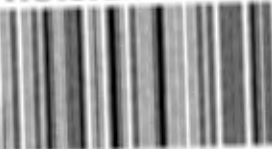
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2-104
tional Institution

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DATE
SERVICE

TRACKING #



0722 4293 0883 05

Label 4780 Jan 2019
mailto:ny-jud@usps.gov

12982-104
U S District Court
Pro Se Clerk
500 Pearl ST
NEW YORK, NY 10007
United States



Monday, August 19th, 2019, Houston v. Lack, 487 U.S. 266 (1988)

USM_{P3}
SDN₇

SDNY

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
AUG 20 2019